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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/974,653	10/10/2001	Andrew D. Bicek	760-49	9912
7590	10/04/2004	EXAMINER		
Ludomir A. Budzyn HOFFMANN & BARON, LLP 6900 Jericho Turnpike Syosset, NY 11791			NGUYEN, VI X	
		ART UNIT	PAPER NUMBER	
		3731		

DATE MAILED: 10/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No. 09/974,653	Applicant(s) BICEK ET AL.	
	Examiner Victor X Nguyen	Art Unit 3731	
--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --			
<p>THE REPLY FILED 20 August 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.</p>			
<u>PERIOD FOR REPLY</u> [check either a) or b)]			
<p>a) <input checked="" type="checkbox"/> The period for reply expires 3 months from the mailing date of the final rejection.</p> <p>b) <input type="checkbox"/> The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.</p>			
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).			
<p>Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</p>			
<p>1. <input type="checkbox"/> A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.</p> <p>2. <input checked="" type="checkbox"/> The proposed amendment(s) will not be entered because:</p> <ul style="list-style-type: none"> (a) <input type="checkbox"/> they raise new issues that would require further consideration and/or search (see NOTE below); (b) <input type="checkbox"/> they raise the issue of new matter (see Note below); (c) <input checked="" type="checkbox"/> they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or (d) <input type="checkbox"/> they present additional claims without canceling a corresponding number of finally rejected claims. 			
<p>NOTE: <u>See Continuation Sheet</u>.</p>			
<p>3. <input type="checkbox"/> Applicant's reply has overcome the following rejection(s): _____. </p> <p>4. <input type="checkbox"/> Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).</p> <p>5. <input checked="" type="checkbox"/> The a)<input type="checkbox"/> affidavit, b)<input type="checkbox"/> exhibit, or c)<input checked="" type="checkbox"/> request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See 2c</u>.</p> <p>6. <input type="checkbox"/> The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.</p> <p>7. <input checked="" type="checkbox"/> For purposes of Appeal, the proposed amendment(s) a)<input checked="" type="checkbox"/> will not be entered or b)<input type="checkbox"/> will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.</p>			
<p>The status of the claim(s) is (or will be) as follows:</p>			
<p>Claim(s) allowed: _____</p> <p>Claim(s) objected to: _____</p> <p>Claim(s) rejected: <u>17-24 and 39</u>.</p> <p>Claim(s) withdrawn from consideration: _____</p>			
<p>8. <input type="checkbox"/> The drawing correction filed on _____ is a)<input type="checkbox"/> approved or b)<input type="checkbox"/> disapproved by the Examiner.</p> <p>9. <input type="checkbox"/> Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.</p> <p>10. <input type="checkbox"/> Other: _____</p>			

Continuation of 5. In the response to the Final Office Action (06/11/2004), the applicant argues that there is no disclosure or suggestion in Davila et al. to solely rely on any pressing force generated by the inner and outer stents to hold the graft in place. The examiner, respectfully, disagrees. Note that the support stent (60, best view in figs. 6 and 9e) is capable of producing a force with the main stent (80) to solely or entirely holding the sheath (104) in place. The statement of intended use and other functional statements have been carefully considered but are deemed not to impose any structural limitations on the claims distinguishable over Davila et al which is capable of being used as claimed if one desires to do so. Since there is no structural limitation in the independent claim to clearly distinguish the present invention over the Davila reference, independent claim 17 is unpatentable over the Davila reference.

VP

9/30/04



JULIAN W. WOO
PRIMARY EXAMINER